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23429 7590 01/19/2011 LOWE HAUPTMAN HAM & BERNER, LLP 1700 DIAGONAL ROAD SUITE 300 ALEXANDRIA, VA 22314				
EXAMINER				
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* KOICHIRO TANI

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Appeal 2009-007488  
Application 10/673,258  
Technology Center 3700

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Before JENNIFER D. BAHR, LINDA E. HORNER and  
STEVEN D.A. McCARTHY, *Administrative Patent Judges*.

McCARTHY, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

1           The Appellant appeals under 35 U.S.C. § 134 from the decision of the  
2 Examiner finally rejecting claims 1, 3-5, 7-10, 12, 13, 15, 17, 19, 20 and 22-  
3 26. The Examiner rejects each of these claims under 35 U.S.C. § 103(a) as  
4 being unpatentable over Robles (US 6,004,306, issued Dec. 21, 1999). We  
5 have jurisdiction under 35 U.S.C. § 6(b).

6           We REVERSE.

7           Claims 1 and 24 are independent. Claim 1 recites:

- 8                     1.     A disposable diaper, comprising:  
9                     a diaper body having a top sheet, a back  
10                    sheet, and an absorbent body enclosed between the  
11                    top sheet and the back sheet;  
12                    a pair of side flaps fixed to the diaper body;  
13                    and  
14                    a pair of fasteners;  
15                    wherein the diaper body further has a pair of  
16                    side edges extending in a longitudinal direction of  
17                    the diaper body;  
18                    wherein each of the side flaps extends in a  
19                    width direction of the diaper body and has an inner  
20                    end being disposed inboard of a respective one of  
21                    the side edges of the diaper body and an outer end  
22                    being disposed outboard of the respective side  
23                    edge of the diaper body, and each of the fasteners  
24                    is fixed to the outer end of one of the side flaps;  
25                    and  
26                    wherein each of the side flaps is fixed to the  
27                    diaper body at  
28                    a fixing part being arranged adjacent  
29                    and along an inner edge of the inner end of  
30                    the respective side flap,

1 a first joint part located at an upper  
2 part of the inner end of the respective side  
3 flap, and

4 a second joint part located at a lower  
5 part of the inner end of the respective side  
6 flap, the lower part being spaced in the  
7 longitudinal direction from the upper part,  
8 and the fixing part being spaced, in the  
9 width direction of the diaper body, from the  
10 joint parts by a bonding-free region in which  
11 the side flap is free of direct attachment to  
12 the diaper body; and

13 wherein a pulling force, which occurs when  
14 the fastener fixed to each of the side flaps is pulled  
15 transversely outwardly in use, is dispersed into  
16 first and second tensile forces directed towards the  
17 first and second joint parts, respectively, and  
18 concentrated around leg and waist openings of the  
19 diaper for enhanced fit of the diaper on a wearer in  
20 use.

21 Claim 24 also recites a disposable diaper including side flaps. Each of  
22 the side flaps is fixed to the diaper body at a fixing part being arranged  
23 adjacent and along an inner edge of the inner end of the respective side flap,  
24 a first joint part located at an upper part of the inner end of the respective  
25 side flap, and a second joint part located at a lower part of the inner end of  
26 the respective side flap. The fixing part is spaced, in the width direction of  
27 the diaper body, inwardly from the joint parts by a bonding-free region in  
28 which the side flap is free of direct attachment to the diaper body.

29 Claims 15 and 17 each recite methods of adjusting fitting of a  
30 disposable diaper about a waist and legs of a wearer. The preambles of  
31 claims 15 and 17 recite performing the methods on diapers “wherein an  
32 inner end of the side flap is fixed to an inner portion of the diaper body, and

1 either or both of a side edge upper end area and a side edge lower end area  
2 of the side flap are joined to the diaper body at an outer portion of the diaper  
3 body, the outer portion being spaced in a width direction of the diaper body  
4 from the inner portion.”

5 Ordinarily, all words in a claim must be considered in determining  
6 whether the subject matter of the claim would have been obvious. *In re*  
7 *Wilson*, 424 F.2d 1382, 1385 (CCPA 1970). “Where a patentee defines a  
8 structurally complete invention in the claim body and uses the preamble only  
9 to state a purpose or intended use for the invention,” however, the preamble  
10 may not limit the claim. *Catalina Mktg. Int’l, Inc. v. Coolsavings.com, Inc.*,  
11 289 F.3d 801, 808 (Fed. Cir. 2002)(quoting *Rowe v. Dror*, 112 F.3d 473,  
12 478 (Fed. Cir. 1997)). Claims 15 and 17 each use both their preamble and  
13 their claim body to define their respective methods. The body of each claim  
14 includes steps expressly performed on the side flaps, first joint part and  
15 second joint part recited in that claim’s preamble. Since the structural  
16 language in the preamble of claim 15 and claim 17 is “necessary to give  
17 meaning to the claim and properly define” the claimed subject matter, claims  
18 15 and 17 are limited to methods performed on the structures recited in their  
19 preambles. *See Perkin-Elmer Corp. v. Computervision Corp.*, 732 F.2d 888,  
20 896 (Fed. Cir. 1984).

21 Robles discloses a disposable diaper. (Robles, col. 4, ll. 9-11.)  
22 Robles’ disposable diaper includes side flaps or extensible side panels 30.  
23 Each of Robles’ side panels 30 includes a waist panel 36 and a thigh panel  
24 38. (Robles, col. 4, ll. 49-53; col. 12, ll. 21-31; and fig. 1.) Robles describes  
25 the waist panels 36 as providing “tension around the wearer’s waist” and the

thigh panels 38 as maintaining “a dynamic fit around the leg of the wearer.”  
(Robles, Abstract.)

Robles further describes the extensible side panels 30 as being disposed adjacent one longitudinal edge 56 of the diaper body or containment assembly 22. (Robles, col. 12, ll. 53-55.). Proximal edges 80 of the side panels 30 are joined to either the top sheet 24 of the diaper body; the back sheet 26 of the diaper body; or both. (Robles, col. 12, ll. 55-67.) Robles describes side panels 30 as being joined to the diaper body 20 by attachment means including intermittent bonding using adhesive, dynamic mechanical bonding or other known methods. (Robles, col. 13, ll. 4-13.) Neither the Examiner nor the Appellant appear to identify any further relevant description by Robles of the bonds formed between the extensible side panels 30 and the diaper body 22.

The Examiner finds that the bonds formed between the extensible side panels 30 and the diaper body 22 described by Robles constitute at least first and second joint parts recited in the independent claims. (Ans. 3.) The Examiner concedes that Robles does not explicitly teach side flap fixing parts separate from the first and second joint parts recited in the claims. (Ans. 4). Nevertheless, the Examiner concludes that the combination of the side flap fixing part, the first joint part and the second joint part recited in the independent claims fails to patentably distinguish the claimed subject matter from the intermittent bonds taught by Robles. (Ans. 10.) Alternatively, the Examiner concludes that it would have been obvious “to place one of the fixing part and joint part inwardly of the other,” based on a finding that “Robles teaches varying the positions and dimensions of the bonding areas so as to effect a different fit for the user.” (Ans. 4.)

1           The passages cited by the Examiner do not support the Examiner's  
2 finding that "Robles teaches varying the positions and dimensions of the  
3 bonding areas so as to effect a different fit for the user." (Ans. 4.) Column  
4 12, lines 24-31 and column 23, lines 32-43 of Robles do not support the  
5 Examiner's finding that Robles teaches varying the positions and dimensions  
6 of the bonding areas. Column 12, lines 24-31 do not address the bonding of  
7 the extensible side panels 30 to the diaper body 22. Column 23, lines 24-31  
8 addresses bonds formed within the waist panels 36 and the thigh panels 38  
9 of the side panels 30 rather than bonds formed between the extensible side  
10 panels 30 and the diaper body 22. Even assuming that the general teaching  
11 found by the Examiner would imply the obviousness of the particular  
12 arrangement of fixing and joint parts recited in claims 1 and 16, the  
13 Examiner has not adequately shown that Robles made such a teaching.

14           Robles' description of the side panels 30 as being joined to the diaper  
15 body 20 by attachment means including intermittent bonding (Robles, col.  
16 13, ll. 4-13) does not imply that any part of any intermittent bond formed  
17 between any side panel 30 and the diaper body 22 is spaced in a *width*  
18 direction of the diaper body relative to any other part of the intermittent  
19 bond. The Examiner has not articulated a rational underpinning for the  
20 conclusion that the structure limiting independent claims 1, 15, 17 and 24 as  
21 a whole would have been obvious. We do not sustain the rejection of claims  
22 1, 3-5, 7-10, 12, 13, 15, 17, 19, 20 and 22-26 under § 103(a) as being  
23 unpatentable over Robles.

DECISION

We REVERSE the Examiner's decision rejecting claims 1, 3-5, 7-10,  
12, 13, 15, 17, 19, 20 and 22-26.

REVERSED

Klh

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